

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SAN LUIS OBISPO MOTHERS FOR PEACE,
SIERRA CLUB, and PEG PINARD,
Petitioners,

v.

No. 03-74628

UNITED STATES NUCLEAR REGULATORY
COMMISSION and the UNITED STATES
OF AMERICA,
Respondents

PACIFIC GAS & ELECTRIC CO.
Intervenor-Respondent

**PETITIONERS' MOTION FOR LEAVE TO FILE
VOLUME OF EXHIBITS**

Petitioners, San Luis Obispo Mothers for Peace, Sierra Club, and Peg Pinard, hereby move for leave to file the enclosed volume of exhibits to their Brief, which Petitioners have prepared for the convenience of the Court. Petitioners have submitted five copies of the volume of exhibits to the Court.

The exhibits consist of non-record documents that are relevant to this appeal, including: (a) an adjudicatory decision by the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") that is heavily relied on by the Commission in one of the decisions on appeal; (b) relevant NRC rulemaking documents, enforcement orders and a guidance document; (c) relevant NRC documents related to the terrorist attacks of September 11, 2001; (d) a relevant

excerpt of the Environmental Report submitted to the NRC by Pacific Gas & Electric Company (“PG&E”), the applicant in the proceeding below, as part of its license application; and (e) excerpts of four relevant environmental impact statements issued by the U.S. Department of Energy (“DOE”). Petitioners rely on these documents to demonstrate that one of the NRC’s decisions in the proceeding below is contradicted by the NRC’s own regulatory actions and guidance, and is also inconsistent with actions taken by the DOE.

Petitioners have contacted counsel for the Federal Respondents (the NRC and the United States of America), and the Intervenor-Respondent (PG&E), regarding this request. The Federal Respondents do not object to the inclusion of previous NRC adjudicatory decisions and Federal Register notices – of which the Court may take judicial notice – in the volume of exhibits. Otherwise, the Federal Respondents believe that the case should be decided on the administrative record, which has been filed with this Court. The Federal Respondents reserve the right, after reviewing Petitioners’ Brief, to object to any item in the volume of exhibits that was not part of the administrative record or that is not relevant or material to an issue in this case.

The Intervenor-Respondent also reserved the right to object to the volume of exhibits, after having an opportunity to review it.

Respectfully submitted,



Diane Curran

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March 15, 2004

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CERTIFICATE OF SERVICE

I certify that on March 15, 2004, copies of the foregoing Petitioners' Motion for Leave to File Volume of Exhibits were served on the following by Federal Express or by hand:

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